

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MANUEL LUIS CRUZ,

Plaintiff,

v.

CONNIE GIPSON, et al.,

Defendants.

No. 1:23-cv-00338-ADA-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS DISMISSING
ACTION FOR FAILURE TO STATE A
COGNIZABLE CLAIM

(ECF No. 7)

Plaintiff Manuel Luis Cruz is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 15, 2023, the Magistrate Judge issued findings and recommendations, recommending that the Court dismiss this case due to Plaintiff's failure to state a cognizable claim. (ECF No. 7.) Plaintiff filed timely objections on April 7, 2023.¹ (ECF No. 8.) In his objections, Plaintiff argues that the Court should permit him an opportunity to amend his complaint in order to allege claims under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). (ECF No. 8 at 1–2.) Plaintiff fails, however, to demonstrate how such an amendment would not be futile. To make out the first element of a *Monell* claim, a plaintiff must allege “that he

¹ Plaintiff filed follow-up objections on June 5, 2023 and August 3, 2023. (ECF Nos. 10, 11.) The substance of those objections is nearly identical to Plaintiff's March 15, 2023 objections. It appears that Plaintiff's main reason for filing the follow-up objections was his concern that the Court had not received his March 15, 2023 objections.

1 possessed a constitutional right of which he was deprived.” *Oviatt v. Pearce*, 954 F.2d 1470,
2 1474 (9th Cir. 1992). As the Magistrate Judge found, Plaintiff has failed to allege the deprivation
3 of a constitutional right in his complaint. The objections do not provide any additional
4 information to convince the Court that Plaintiff would be able to allege such a deprivation in an
5 amended complaint.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B), the Court has conducted a
7 de novo review of this case. Having carefully reviewed the entire file, including Plaintiff’s
8 objections, the Court finds the findings and recommendations to be supported by the record and
9 proper analysis.

10 Accordingly,

- 11 1. The findings and recommendations issued on March 15, 2023, (ECF No. 7), are
12 adopted in full;
- 13 2. This action is dismissed, with prejudice, due to Plaintiff’s failure to state a claim
14 upon which relief may be granted; and
- 15 3. The Clerk of Court is directed to close this case.

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18 IT IS SO ORDERED.

19 Dated: August 17, 2023

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UNITED STATES DISTRICT JUDGE